IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Subodh A. Samuel et al.	Art Unit	: 2152
Serial No.	: 10/092,181	Examiner	: Lan Dai Thi Truong
Filed	: March 5, 2002	Conf. No.	: 7558
Title	: SYSTEM AND METHOD FOR ENTERPRISE SOFTWARE DISTRIBUTION		

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BRIEF ON APPEAL

Appellant files this brief on appeal under 37 CFR 41.37, thereby perfecting the notice of appeal which was originally filed on September 11, 2006, after the final Office Action mailed May 12, 2006.

(1) Real Party in Interest

Electronic Data Systems Corporation, the assignee of record in the present Application, is the real party in interest.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1-17 are pending in the application, of which claims 1 and 11 are independent. All pending claims stand rejected, and all claims are being appealed.

(4) Status of Amendments

No amendments have been filed subsequent to the final rejection.

(5) Summary of Claimed Subject Matter

Independent claim 1 is directed to a method for distributing software. *See* p. 8, lines 8-10. System 100 can be used to efficiently distribute software in an enterprise, distributing software to geographically distributed workstations or nodes from a single distribution point. *See* p. 8, lines 10-13; Fig. 1. System 100 includes application distribution system 102, which can

be implemented as an application server. *See* p. 8, lines 14-18. The application distribution system 102 provides messages to at least one primary router 104 (e.g., an application layer router) for distribution to endpoints in system 100. *See* p. 9, lines 14-28; p. 10, lines 9-10; Fig. 1. Primary router 104 is coupled to secondary router 108 and secondary router 112, such as through a network. *See* p. 11, lines 7-8. Application distribution system 102 defines two channels: a first channel between primary router 104 and the plurality of secondary routers and a second channel between the plurality of secondary routers and the plurality of system endpoints. *See* p. 12, lines 16-19; Fig. 1. After receiving the message from application distribution system 102, primary router 104 distributes said message through one or more first channels selected from the first channel layer such that the message is transmitted to the proper secondary routers. *See* p. 11, lines 12-14; p. 12, lines 16-21; Fig. 1. Secondary router 108 is coupled to endpoint 116 and endpoint 118, creating the second channel layer, similar to primary router's 104 coupling with secondary router 108 and secondary router 112 to form the first channel layer. *See* p. 12, lines 16-21; Fig. 1. Secondary router 108 receives the message from primary router 104, subsequently transmitting the message over the second channel layer to the specified endpoint 116. *See* p. 12, lines 8-13.

The endpoint configuration system 202 manages a collection of endpoint configuration data for a plurality of endpoints. *See* p. 14, lines 23-25; Fig. 2. Endpoint configuration system 202 can include details describing the specific properties of each endpoint, such as any suitable data necessary for software distribution. *See* p. 14, lines 25-30. The endpoint data maintained in endpoint configuration system 202 is used to identify the software that should be transmitted to the plurality of endpoints. *See* p. 14, line 30 – p. 15, line 2. The primary router 104 associated with the particular address of each endpoint registers with the application distribution system 102 to receive messages as required according to the endpoint configuration data. *See* p. 10, lines 1-5; p. 11, lines 22-27. Similarly, the message is distributed to secondary router 108 in response to secondary router's 108 registration with the application distribution system 102 according to endpoint configuration data in endpoint configuration system 202. *See* p. 11, lines 22-27; p. 12, lines 13-21.

Independent claim 11 is directed to a system for distributing software. *See* p. 8, lines 8-13. System 100 includes application distribution system 102, implemented as an application

server, which distributes messages through the components of system 100 to a plurality of endpoints. *See* p. 8, lines 14-18; p. 9, lines 14-28. System 100 includes at least one primary router 104 (e.g., an application layer router). *See* p. 9, lines 14-28; Fig. 1. Primary router 104 is coupled to secondary router 108 and secondary router 112, both also application layer routers, through a network connection or other suitable means. *See* p. 11, lines 7-12. Secondary router 108 is coupled to endpoint 116 and endpoint 118, and secondary router 112 is coupled to endpoint 120 and endpoint 122, also through network connections or other suitable means. *See* p. 12, lines 4-8. The first channel layer is represented by the coupling of primary router 104 and secondary routers 108 and 112, and the second channel layer is represented by the coupling of the secondary routers 108 and 112 to endpoints 116 through 122. *See* p. 12, lines 16-19.

The application distribution system 102 distributes a message to the primary router 104, which is coupled to the first channel layer. See p. 9, lines 27-28. Primary router 104 then transmits the message over the first channel to secondary router 108 or 112. *See* p. 11, lines 19-22. The message is distributed to primary router 104 in response to the primary router's 104 registration with the application distribution system 102 to receive messages for one or more endpoints according to the endpoint configuration data found in the endpoint configuration system 202. *See* p. 11, 22-27; p. 14, line 23 – p. 15, line 2. Secondary router 108 and any other secondary routers are coupled to the second channel layer, similar to primary router's 104 coupling to the first channel layer. *See* p. 12, lines 16-21; Fig. 1. Secondary router 108 receives the message from primary router 104, subsequently transmitting the message over the second channel layer to the specified endpoint 116. *See* p. 12, lines 8-13. The message is distributed to secondary router 108 in response to secondary router's 108 registration with the application distribution system 102 to receive messages for one or more endpoints according to the endpoint configuration data located in the endpoint configuration system 202. *See* p. 11, lines 22-27; p. 14, line 23 – p. 15, line 2. Finally, secondary router 108 distributes the message to endpoint 118, the intended recipient of the message. *See* p. 12, lines 13-16; Fig. 1.

(6) Grounds of Rejection

I. Claims 1-3, 6, 8 and 11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Kovarik et al. (U.S. Patent No. 7,020,717) (hereinafter "*Kovarik*").

II. Claims 4-5, 7, 9 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kovarik et al. in view of Datta et al. (U.S. Patent No. 6,493,341) (hereinafter "*Datta*").

III. Claims 13-14, 16-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kovarik et al. in view of Crowle (U.S. Patent No. 5,857,072) (hereinafter "*Crowle*").

IV. Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Kovarik et al. in view of Crowle in further view of Miller et al. (U.S. Patent No. 6,907,011) (hereinafter "*Miller*").

(7) Argument

I. The Kovarik et al. Reference Fails to Teach or Suggest the Claimed Invention.

A. Claim 1 and its dependent claims are patentable over the Kovarik et al. reference.

Claim 1 recites:

> A method for distributing software comprising:
> distributing a message from an application server to one or more application layer routers through one or more first channels selected from a first channel layer, wherein the message is distributed to the one or more application layer routers in response to at least the one or more application layer routers registering with the application server to receive messages in accordance with configuration data of one or more endpoints; and
> distributing the message from the one or more application routers to the one or more endpoints through one or more second channels selected from a second channel layer, wherein the message is distributed to the one or more endpoints in response to at least the one or more endpoints registering with the one or more application layer routers to receive messages in accordance with the configuration data of the one or more endpoints.

Kovarik fails to teach or suggest these claim limitations. To establish anticipation, the cited reference must teach every limitation of the claimed invention. MPEP § 706.02. For the teaching of the application server, the application layer routers, and the endpoints, the Examiner offers the message topic server 125, the message routers 115, and the applications 105, respectively. However, *Kovarik* merely teaches either transmitting messages between the message topic server 125 and the message router 115 or between applications 105, not that the message topic server 125 distributes messages to an application 105 via the message routers 115.

In general, *Kovarik* teaches that the message topic server 125 stores a table of applications 105 that publish messages associated with specific topics. Col. 5, lines 13-16. In the event that an application 105 transmits a request to an associated message router 115 for messages associated with a specific topic, the message router 115 transmits, to the message topic server 125, a request to identify the applications 105 publishing messages associated with the specified topic. Col. 7, lines 16-18. The message topic server 125 identifies message routers 115 associated with the topic and transmits information identifying the message routers 115 to the requesting message router 115. Col. 7, lines 19-38. In response to receiving the identification message, the requesting message router 115 establishes a communication link with the identified message router 115 to enable the requesting application 105 to receive messages associated with the topic from the application 105 publishing the messages. Col. 7, lines 48-64. Therefore, the only messages that the applications 105 receive are messages transmitted from other applications 105, not the message topic server 125. Moreover, the message topic server 125 does not in fact transmit messages that are subsequently received by an application 105. Thus, *Kovarik* fails to teach or suggest that the message topic server 125 transmits a message to a message router 115 ("first channel") that in turn transmits the message to an application 105 ("second channel").

Kovarik also fails to teach or suggest a method of distributing software. The *Kovarik* reference instead pertains solely to a distributed messaging system for transmitting topical data messages from data publishers to data consumers. Col. 2, lines 22-23. The Examiner erroneously states in his rejection that *Kovarik* discloses a method for distributing software. Conversely, nowhere in its claims or specification, either explicitly or implicitly, does *Kovarik* disclose a method for distributing software. The express language of Applicant's invention makes clear that the claims are directed to a method for distributing software. The *Kovarik* reference, on the other hand, merely discloses a method which can be implemented in either computer hardware or software code. Thus, *Kovarik* generally fails to teach or suggest the invention defined by Claim 1 or by any of its dependent claims.

B. Claim 11 and its dependents are patentable over the Kovarik et al. reference.

Claim 11 recites:

> A system for distributing software comprising:
> an application server transmitting a message that includes a first channel selected from a first channel layer and a second channel selected from a second channel layer;
> a first application layer router coupled to the first channel layer receiving the message and transmitting the message over the first channel, wherein the message is distributed to the first application layer router in response to at least the first application layer router registering with the application server to receive messages in accordance with configuration data of at least a first endpoint;
> a second application layer router coupled to the second channel layer receiving the message and transmitting the message over the second channel, wherein the message is distributed to the second application layer router in response to at least the second application layer router registering with the application server to receive messages in accordance with configuration data of at least a second endpoint; and
> the second endpoint receiving the message from the second channel layer.

To demonstrate anticipation the cited reference must teach or disclose every limitation in the claimed invention. MPEP § 706.02. *Kovarik* fails to teach or suggest all limitations of Claim 11, thus failing to present a case of anticipation. Similar to the rejection of Claim 1, the Examiner cites the message topic server 125, the message routers 115, and the applications 105 as corresponding to the application server, the application layer routers, and the endpoints of Claim 11, respectively. As argued above, *Kovarik* merely teaches either transmitting messages between the message topic server 125 and the message router 115 or between applications 105. *Kovarik* fails to teach that the message topic server 125 distributes messages to an application 105 via the message routers 115. Claim 11 transmission of a message through both a first and second channel during distribution. *Kovarik* merely teaches transmitting the messages on a first channel, said channel represented by either the connection between message topic server 125 and message router 115 or the connection between applications 105. Thus, *Kovarik* fails to teach or suggest a system in which a message topic server 125 transmits a message to a message router 115 ("first channel") that in turn transmits the message to an application 105 ("second channel").

Kovarik also generally fails to teach or suggest a system for distributing software, instead teaching a distributed messaging system for transmitting data messages from data publishers to

data consumers. Col. 2, lines 22-23. The Examiner erroneously reads the *Kovarik* reference as disclosing a system for distributing software. The *Kovarik* reference discloses a system which allows for implementation in either computer hardware or software code; however, the system is explicitly limited to a system of distributed messaging which only involves the transmission of data messages. Conversely, the express language of the Claim 11 indicates that the invention claimed encompasses a system specifically for distributing software. Thus, *Kovarik* generally fails to teach or suggest the invention defined by claim 11 or by any of its dependent claims.

C. Claim 6.

Claim 6 recites:

> The method of claim 1 wherein distributing the message to the endpoint further comprises:
>
> storing the message at the selected application layer router; and
>
> distributing the message to the endpoint through one or more second channels selected from the second channel layer after the occurrence of a predetermined event.

Claim 6 is patentable through its dependency on independent Claim 1, which is distinguishable over the *Kovarik* reference as discussed above. The additional limitations of Claim 6 further distinguish the invention from the *Kovarik* reference cited by the Examiner. In finding anticipation, the Examiner cites the portion of *Kovarik* in which the prior art discloses a message topic server that searches to find a suitable message router from the list of message routers who have registered message topics in the message topic server. Col. 10, lines 17-38. The cited portion of *Kovarik* illustrates a recovery process triggered by the detection of a communications fault in the publication process. Col. 10, lines 8-10. The reference discloses a fault detection mechanism and actions taken to recover the publication process such as notifying the linked message router (cited by the Examiner as synonymous with the "application layer router" of Applicant's invention) that transmission of data has been interrupted and allowing the message router ("application layer router") to re-subscribe with the message topic server (synonymous with the "application distribution system") to receive the message through alternative routing. *See* Col. 10, lines 10-38.

Nowhere in the portions cited by the Examiner, or elsewhere in the *Kovarik* reference, is the limitation of "storing the message at the selected application layer router" taught or suggested. *Kovarik* does not teach that the message is stored at the message router ("selected application layer router") for any length of time. Col. 10, lines 10-38. To the contrary, after a communication error, the message router ("application layer router") attempts to re-subscribe to the message, clearly indicating that the message is not being stored at the message router. Col. 10, lines 21-30. Therefore, *Kovarik* fails to teach or suggest the limitations of Claim 6.

II. The Kovarik et al. and Datta et al. References Fail to Teach or Suggest the Claimed Invention.

A. Claim 4.

Claim 4 recites:

> The method of claim 1 wherein the first channel and the second channel are selected by the application server based on the available data communications bandwidth in one of the first channels or one of the second channels.

As previously shown, *Kovarik* fails to teach or suggest all the limitations of independent Claim 1. The Examiner argues that Claim 4 is obvious when *Kovarik* is viewed in combination with *Datta*. However, the *Datta* reference fails to teach or suggest the limitations of Claim 1 missing from *Kovarik*. To establish *prima facie* obviousness, all of the claim limitations must be taught or suggested by the cited art. MPEP § 2143.03. Thus, the Examiner has failed to establish *prima facie* obviousness.

Datta discloses a system and method for improved data transmission by combining the use of multiple routers such that multiple links are provided between two or more sites, thus providing greater bandwidth and aggregate data throughput for the flow of information. Col. 4, lines 4-15. *Datta* does not teach or suggest the limitation of Claim 1 wherein the application server (application distribution system 102) distributes a message to one or more application layer routers (primary router 104) through a first channel (primary router 104 to secondary router 108) and the one or more application layer routers (secondary router 108) distributes the message to one or more endpoints (endpoint 116) through one or more second channels (secondary router

108 to endpoint 116) selected from a second channel layer. Because *Datta* fails to teach the limitation that is also not taught by *Kovarik*, the combination of the prior art references fails to teach or suggest all limitations of independent Claim 1, and through its dependency thereon, also fails to teach or suggest all limitations of dependent Claim 4.

B. Claim 5.

Claim 5 recites:

> The method of claim 1 wherein the first channel and the second channel are selected by the application server based on the available data processing capacity of the selected application layer router.

For reasons stated in the above discussion of Claim 4, the combined reference of *Datta* and *Kovarik* fails to teach or suggest the limitations of independent Claims 1. Due to the dependency of Claim 5 upon Claim 1, Claim 5 is also allowable.

C. Claim 7.

Claim 7 recites:

> The method of claim 6 wherein the predetermined event is one or more of the group comprising an expiration of a time, receipt of an event occurrence message, receipt of a bandwidth availability message, and receipt of a processor capacity availability message.

Claim 7 depends directly on Claim 6 and indirectly on Claim 1. For reasons previously cited, the individual *Kovarik* reference and the combination of *Kovarik* and *Datta* fail to teach or suggest the limitations of independent Claim 1. Also shown above, the *Kovarik* reference fails to teach or suggest all the limitations of Claim 6. Claim 6 provides for limitations of "storing the message at the selected application layer router" and "distributing the message to the endpoint…after the occurrence of a predetermined event" – neither of which is taught or suggested by the *Kovarik* reference. Due to the inheritance of both Claim 1 and Claim 6's limitations, Claim 7 is allowable over the combination of the cited prior art references.

In addition, the limitations of Claim 7provide other justifications for its allowability. The Examiner acknowledges that *Kovarik* fails to teach or suggest the limitation of Claim 7 wherein the predetermined event is one or more of the group comprising receipt of a bandwidth availability message and receipt of a processor capacity availability message, but states:

> However, *Datta* discloses a high-speed interconnection communication system for delivering data between two or more sites; wherein multiple software routers are used to provide multiple links between two or more sites. The software selects the routers have [sic] highest available bandwidth to delivery [sic] message. Col. 4, lines 1-67.

Datta discloses a system and method for improved data transmission by combining the power of multiple routers such that multiple links are provided between two or more sites, thus providing greater bandwidth and aggregate data throughput for the flow of information. Col. 4, lines 4-15. *Datta* does not, however, teach distributing the message to the endpoint after the occurrence of a predetermined event wherein the event is one or more of the group comprising an expiration of a timer, the receipt of an event occurrence message, the receipt of a bandwidth availability message, and the receipt of a processor capacity availability message.

The Examiner cites language in the *Datta* specification which provides that controller software decides, based upon router loads and other criteria, how to multiplex messages across multiple routers. Col. 4, lines 42-43. *Datta* does not teach or suggest, however, when to distribute the message. Claim 7 provides that the distribution of the message is performed upon the occurrence of a predetermined event from the group of events comprising the expiration of a timer, the receipt of an event occurrence message, the receipt of a bandwidth availability message, and the receipt of a processor capacity availability message. The distribution of messages in *Datta* occurs upon the receipt of a SYN packet by the controller 308, indicating a new data transfer connection request. Col. 8, lines 25-30. Unlike the Applicant's invention, *Datta* distributes the message upon receipt. The *Datta* reference teaches a method of selecting how, not when, to transfer the information – specifically, by using various algorithms to select one or more routers with which to distribute the message. Col. 8, lines 31-43. Therefore, *Datta* fails to teach or suggest the limitations taught by dependent Claim 7.

D. Claim 9.

Claim 9 recites:

> The method of claim 8 wherein determining the sequence comprises determining the sequence based on one or more of the group comprising data communications bandwidth availability between the application server and the endpoint, processing capacity of one or more of the application layer routers, processing capacity of a gateway receiving messages from the endpoint and the

application server, and data communications bandwidth availability between the endpoint and the gateway.

Claim 9 depends directly upon Claim 8 and indirectly upon independent Claim 1. For reasons previously cited above, the combination of *Kovarik* and *Datta* fails to teach or suggest all limitations of Claim 1 and/or Claim 8. Therefore, Claim 9, indirectly dependent upon Claim 1, inherits the allowable nature of Claim 1.

E. Claim 12.

Claim 12 recites:

> The system of claim 11 wherein the application server further comprises a bandwidth allocation system transmitting the message.

For reasons previously cited, the individual *Kovarik* reference and the combination of *Kovarik* and *Datta* fail to teach or suggest the limitations of independent Claim 11. Because Claim 12 depends directly on Claim 11, Claim 12 is allowable under the rationale discussed above.

III. The Kovarik et al. and Crowle References Fail to Teach or Suggest the Claimed Invention.

A. Claim 13.

Claim 13 is dependent upon Claim 11. For reasons cited above, *Kovarik* fails to teach every limitation of independent Claim 11. As will be shown, the specification and claims of *Crowle* also fail to teach or suggest the portions of Claim 11 not disclosed by *Kovarik*. Thus, because Claim 11 is allowable, Claim 13 is patentable over the cited § 103 references.

Crowle fails to teach or suggest the portions of Claim 11 that are not disclosed by *Kovarik*. *Crowle* discloses a method and system for distributing data through a simultaneous data transfer sent to multiple computer locations associated with a network which can be accepted by multiple network computers that are intended locations for the data distribution. Col. 3, lines 1-14. The method determines which of the multiple network computer locations are to receive a data distribution, and then generates a first message indicating the data comprising the data distribution and the network locations intended for receipt. Col. 3, lines 25-30. The first message and data distribution are transmitted such that each network location is capable of

receiving the data distribution, wherein the network location determines whether a computer in its location will be receiving the data. Col. 3, lines 30-36.

The Examiner does not argue that the combination of *Kovarik* and *Crowle* combines to teach or suggest all limitations of independent Claim 11. *Crowle* does not teach or suggest the limitation of Claim 11 wherein the application server (application distribution system 102) transmits a message that includes a first channel selected from a first channel layer (primary router 104 to secondary router 108) and a second channel selected from a second channel layer (secondary router 108 to endpoint 116.) Because *Crowle* fails to teach this limitation that is also not taught by *Kovarik*, the combination of the prior art references fails to teach or suggest all limitations of independent Claim 11. Therefore, Claim 13 is also allowable based on the inherited limitations of Claim 11.

CONCLUSION

In view of the foregoing, the Examiner's rejection should be reversed. Should the Board be of the opinion that a claim on appeal may be amended to overcome a specific rejection, the Board is respectfully requested to include in the opinion such a statement and afford appellant the right to amend in conformity therewith.

The Brief fee in the amount of $250 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 05-0765.

Respectfully submitted,

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Appendix of Claims

1. A method for distributing software comprising:

distributing a message from an application server to one or more application layer routers through one or more first channels selected from a first channel layer, wherein the message is distributed to the one or more application layer routers in response to at least the one or more application layer routers registering with the application server to receive messages in accordance with configuration data of one or more endpoints; and

distributing the message from the one or more application routers to the one or more endpoints through one or more second channels selected from a second channel layer, wherein the message is distributed to the one or more endpoints in response to at least the one or more endpoints registering with the one or more application layer routers to receive messages in accordance with the configuration data of the one or more endpoints.

2. The method of claim 1 wherein distributing the message to the endpoint further comprises:

distributing the message to one or more secondary application layer routers through one or more second channels selected from a second channel layer; and

distributing the message to the endpoint through one or more third channels selected from a third channel layer.

3. The method of claim 1 wherein the first channel and the second channel are selected by the application server.

4. The method of claim 1 wherein the first channel and the second channel are selected by the application server based on the available data communications bandwidth in one of the first channels or one of the second channels,

5. The method of claim 1 wherein the first channel and the second channel are selected by the application server based on the available data processing capacity of the selected application layer router.

6. The method of claim 1 wherein distributing the message to the endpoint further comprises:

storing the message at the selected application layer router; and

distributing the message to the endpoint through one or more second channels selected from the second channel layer after the occurrence of a predetermined event.

7. The method of claim 6 wherein the predetermined event is one or more of the group comprising an expiration of a timer, receipt of an event occurrence message, receipt of a bandwidth availability message, and receipt of a processor capacity availability message.

8. The method of claim 1 further comprising determining a sequence for the message prior to distributing the message from the application server to one or more application layer routers.

9. The method of claim 8 wherein determining the sequence comprises determining the sequence base on one or more of the group comprising data communications bandwidth availability between the application server and the endpoint, processing capacity of one or more of the application layer routers, processing capacity of a gateway receiving messages from the endpoint and the application server, and data communications bandwidth availability between the endpoint and the gateway.

10. The method of claim 1 further comprising:

generating a response to the message at the endpoint; and

transmitting the response to a destination system using an application layer gateway.

11. A system for distributing software comprising:

an application server transmitting a message that includes a first channel selected from a first channel layer and a second channel selected from a second channel layer;

a first application layer router coupled to the first channel layer receiving the message and transmitting the message over the first channel, wherein the message is distributed to the first application layer router in response to at least the first application layer router registering with the application server to receive messages in accordance with configuration data of at least a first endpoint;

a second application layer router coupled to the second channel layer receiving the message and transmitting the message over the second channel, wherein the message is distributed to the second application layer router in response to at least the second application layer router registering with the application server to receive messages in accordance with configuration data of at least a second endpoint; and

the second endpoint receiving the message from the second channel layer.

12. The system of claim 11 wherein the application server further comprises a bandwidth allocation system transmitting the message.

13. The system of claim 11 wherein the application server further comprises an event based sequencing system transmitting the message.

14. The system of claim 11 wherein the first application layer router further comprises a router controller storing the message prior to transmitting the message over the first channel.

15. The system of claim 14 wherein the router controller further comprises a message timing system storing the message for a predetermined period of time.

16. The system of claim 14 wherein the router controller further comprises an event based message system storing the message until the occurrence of a predetermined event.

17. The system of claim 11 further comprising a gateway receiving response data from the endpoint generated in response to the message.

Evidence Appendix

None

Related Proceedings Appendix

None